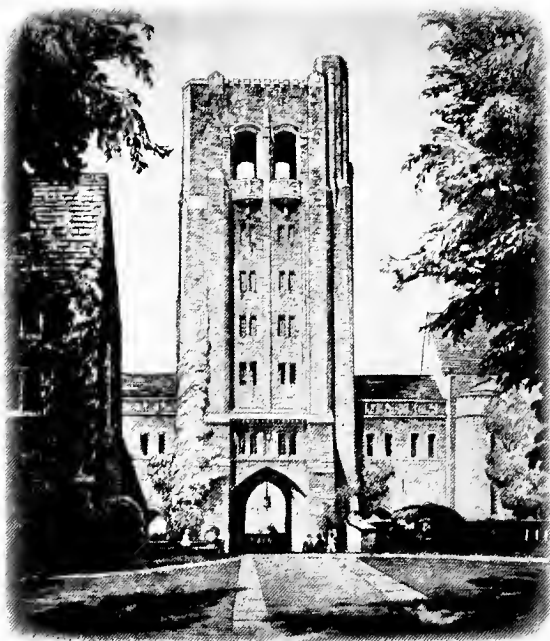




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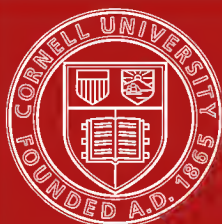
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A KEY
TO
STORY'S
Equity Jurisprudence,

CONTAINING OVER EIGHT HUNDRED QUESTIONS.

BEING AN ANALYSIS

CLASSIFIED BY SUBJECTS AND REFERENCES, AND AN INDEX.

*Designed for the use of Universities, Colleges, and Law Schools,
and for Private Use.*

BY R. S. GUERNSEY,
OF THE NEW YORK BAR.

NEW YORK
DIOSSY AND COMPANY, PUBLISHERS,
86 NASSAU STREET,
1876.

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Entered according to act of Congress, in the year 1875,
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INTRODUCTION.

THE object of this work on Equity Jurisprudence is mainly to furnish a guide, and aid to enable law students to become proficient in this comprehensive branch of practical legal science,—not by a short and easy method, or by a “royal road,” but by their own industry and perseverance.

The subjects which it covers are those of the most frequent occurrence of any that arise in the affairs of men. No lawyer can follow his profession without a knowledge of the principles of Equity Jurisprudence. It is the only *paying* branch of the law, as well as that in which the highest order of talent and skill is necessary to be exercised, and is eagerly sought for. All rights of property, and many rights of the person, are subject to its super-

vision and controlled by its principles. Its importance and comprehensiveness are therefore apparent.

The greatest difficulty under which law students labor at the present day, is in the great mass of matter laid before them which is incumbered by minute details of decisions, &c., which tend to obscure and hide the great underlying principles and the magnificent and harmonious system upon which the law is founded.

Nearly all of the text-books now used are mere collections of numerous cases, arranged chronologically rather than logically, and very imperfectly digested, and they present the law as made up of endless details of statutes and decisions (the latter often conflicting), without showing from whence they were derived, or upon what principles they are based. This confuses the mind of the student, and he rarely ever recovers from the effects of it.

By the existing mode of study, lawyers are ever afterwards obliged to seek for cases for every point, and do not know how to rely upon general principles for any question that

may arise in the course of their practice. This involves great labor and drudgery: and access to an extensive library of the numerous reports is almost indispensable to them. They are mere "case lawyers."

The following pages are for the express purpose of aiding law students to study and clearly understand this branch of the law as a *system*, complete within itself, and as founded upon logical and scientific principles.

The arrangement is such that the chapters and questions comprise an outline and skeleton analysis of the entire system of Equity Jurisprudence, and the student may use any one or more standard works to fill up the subjects. There are: Story (2 vols. Boston, 1873), Adams by Sharswood, &c. (Philadelphia, 1873), Spence (2 vols., London and Phil. 1850), Watson (2 vols., London, 1873), Snell (London, 1874), Haynes (London, 1865), Smith's Manual (London, 1867), Willard by Potter (N. Y., 1875).*

* Willard's work, though founded mainly upon the laws of New York state, contains the modern American system as it now exists at common law and under statutory changes in all the states.

works on the special subjects stated in the chapters may be used, the following pages serving as an analysis and guide, and also as a test of progress and understanding in this study. The questions are such as constantly arise in actual practice. Story's Equity Jurisprudence, upon which this analysis and questions and alphabetical index are founded, is referred to by the chapter and titles containing the subjects and answers to the questions used, and the absence of reference to the pages and sections is for the purpose of *requiring* the student to make a note on the margin and space for that purpose, *briefly stating the answer to each question*, and showing where it can be found. The edition of this work containing a blank page to each page of questions, is for the purpose of allowing more extended notes of references, or answers and an analysis, to be made in the course of reading or actual practice, and thus it will serve as a *general index* of notes and references to authorities, leading decisions, statutory alterations, &c., making a useful and practical *Index Legum*, or Lawyer's

Common-Place Book on this branch of the law. Such a use of it is particularly commended, as it will be of almost incalculable aid in enabling a person to obtain a competent and thorough knowledge of Equity Jurisprudence, and to practically add to its utility through an active professional life. It will show the extent of his researches, knowledge, and understanding of the subject of which his notes treat, and they may be made up of briefs or used for copying them in when on the subjects named in the chapters.

This is a work for the law student on a more convenient and practical plan, though similar in purpose to that which Dr. Todd recommended to students as a system for an "Index Rerum," which has been found so instructive, useful, and valuable in after years to all who have followed his advice.

By this means the student is enabled to make a complete analysis or digest and treatise by his own hand, only limited in extent and detail by his industry and taste. It should not be so extensive and minute, however, as to hide the principles in the

details. Lord Coke, in his Commentaries upon Littleton, in concluding, says: "I had once intended, for the ease of our student, to have made a table of these Institutes, but when I consider that tables and abridgments are most profitable to them that make them, I have left that work to every studious reader."

In "The Course of Legal Study," by David Hoffman, in recommending note-books for law students, he said :

"The objects of noting are two: first, as a means of impressing knowledge on the mind, by selecting and extracting from much that which is valuable; and, secondly, the possession of such a digest as may be frequently resorted to; which digest, being the work of the student himself, carefully and judiciously selected from an infinite variety of authors, and methodically arranged, must be familiar to him, and can be examined by him with more facility, for the solution of an occasional doubt, than perhaps any other work."

The alphabetical index will be found of

great utility, for this purpose, to a practicing lawyer.

It is a remarkable fact that nearly every lawyer that has become eminent in his profession, adopted the plan, while a student, or making an analysis of the elementary law-books as they were read.*

The plan of this work is entirely new and original, and has never before been tried as an aid in the study of the law, and it is now introduced to the consideration of professors and students for the first time.

The advantages of this new system over every other are: (1) It is entirely of a practical character—the study being under special directions relating to the collection of the leading principles involved; (2) The matter thus accumulated is always available for use; (3) It is not necessarily voluminous or laborious.

The author is confident that any student who follows the method of study here recommended and laid down, will never abandon or regret it so long as he continues the study of

* See Baker's Life of W. H. Seward.

the subject, and he will be ever thankful for the facilities which it affords in understanding and accumulating a thorough knowledge of this very practical, though now too much neglected, branch of the law.

Professors will also find this work of great aid to law students under their charge.

If this work induces a more thorough study and a better understanding of this branch of the law, the author will feel amply repaid for all his endeavors to render valuable contributions to his profession.

R. S. GUERNSEY.

NEW YORK CITY,

December 6, 1875.

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PART I.

FOUNDATIONS OF EQUITY JURISPRUDENCE.

CHAPTER I.

NATURE OF EQUITY JURISPRUDENCE.

1. What is equity jurisprudence.
2. How do the distinctions between courts of equity and courts of common law arise.
3. Can trusts be recognized or protected by courts of common law.

4. Mention some of the cases in which courts of common law have no means of enforcing the just rights of the parties.

5. What is the distinction in the manner of the trial of causes in the two courts, and to the jurisdiction over a case, and the relief they are competent to give.

6. By what general rule do courts of equity acquire jurisdiction.

7. When jurisdiction in a court of equity has once attached, will the subsequent extension of the jurisdiction of a court of law destroy or annul its action.

8. How may the subjects of equitable jurisdiction be divided.

9. Have courts of equity any criminal cognizance.

10. When may a party be compelled to elect a remedy or proceeding.

CHAPTER II.

ORIGIN AND HISTORY OF EQUITY JURISPRUDENCE.

1. What is Lord Hardwicke's theory as to the origin of the extraordinary and equitable jurisdiction of courts of chancery.

2. How has his theory been confirmed by recent investigation.

3. What chiefly contributed to extend the jurisdiction.

4. What is the sole question to be considered, where its jurisdiction is sought.

5. Do courts of equity now exercise as wide a latitude of discretion in the decision of cases as the early chancellors.

4 ORIGIN AND HISTORY OF EQUITY.

6. Do the courts of chancery now administer justice by any fixed and certain rules.

7. How is equity jurisprudence administered in the federal and respective state courts in this country.

8. Is it recognized and administered in all the states.

CHAPTER III.

GENERAL VIEW OF EQUITY JURISPRUDENCE— MAXIMS.

1. How is Lord Coke's enumeration of the subjects of equity jurisdiction defective.

2. How is the best mode to ascertain the nature and extent and grounds of equity jurisdiction.

3. What are the general maxims that have been adopted by courts of equity in the exercise of their jurisdiction.

4. What is the meaning and extent of the maxim,
“Æquitas requiritur legem.”

5. How far does equity generally adopt the rules of law.

6. How is the statute of limitations regarded, and in what cases does it not run in equity.

7. What is the meaning of the maxim that where there is equal equity the law must prevail.

8. Illustrate the maxim that "He who seeks equity must do equity."

9. What is the application of the maxim that "Equity delighteth in equality."

10. What is the meaning and extent of the maxim that "Equity looks upon that as done which ought to be done," and illustrate it.

11. What is the general rule when the title is at law, and the party comes into equity for discovery, and for relief as consequent on that discovery.

12. In what matters is the power of a court of equity peculiarly proper.

13. Do the American authorities follow the English rule on this subject.

14. What is essential to maintain the jurisdiction for relief to obtain discovery.

15. What if the answer denies the matters of fact of which a discovery is sought.

PART II.

CONCURRENT JURISDICTION OF EQUITY.

CHAPTER IV.

ACCIDENT.

1. What two classes of cases are embraced under the concurrent jurisdiction of equity.

2. What are included in the former class, and what in the latter.

3. What is an accident, and when will a court of equity grant relief, and how is it restricted.

4. What are the four cases of most common occurrence comprehended under the first class of accidents, or those which would deprive a party of some clear right.

5. What are the four most usual cases occurring under the second class of accidents as those which would subject a party to an unjustifiable loss.

6. Will equity relieve a party who has entered into a positive contract or obligation which he is prevented from fulfilling, or deprived of the benefit of it by accident.

7. Why will it not give relief.

CHAPTER V.

MISTAKE.

1. What is a mistake, and what are its sources.

2. In what cases will courts of equity grant relief where a mistake has been committed through ignorance.

3. What are the reasons for these rules.

4. Where one security has been deliberately selected by the parties in preference to another through a mistake of law, will a court of equity grant relief by reforming the selected instrument so as to give it the same effect as that which was rejected.

5. Where a party acting under misapprehension of law supposes that he has no title to property with which he parts for a nominal consideration under the name of compromise, will a court of equity grant relief.

6. What principles are applicable to the case of compromise.

7. How do courts of equity look upon family compromises.

8 Where a judgment has been obtained upon a point of law, which at a subsequent period is adjudicated differently, will equity grant relief against the judgment.

9. What is the qualification to the general rule that equity will relieve where a party has made a contract in ignorance of a material fact.

10. How is the remaining class of mistakes arising from surprise, imposition, or misplaced confidence regarded in equity.

11. Will courts of equity relieve parties against contracts made under a mutual surprise.

12. When will courts of equity reform written agreements.

13. Does this relief extend to executed contracts.

14. How far do courts of equity depart from the rule at law which excludes the admission of parol evidence to vary or control written contracts.

15. Is there a distinction between the case of a plaintiff who seeks to reform a contract, and then enforces it, and a defendant who resists its performance upon the ground of mistake.

16. Will equity grant relief where the parties have omitted any acts or circumstances necessary to give due validity to written instruments.

17. Will equity relieve against defectively-executed powers, and to correct mistakes in wills.

18. By what principle in every case of mistake is the exercise of equity jurisdiction limited.

CHAPTER VI.

ACTUAL OR POSITIVE FRAUD.

1. What does fraud include, and to what extent do courts of equity exercise jurisdiction over it.

2. Do courts of equity require the same amount of evidence to establish fraud as courts of law.

3. What two kinds of fraud are there.

4. What will render a contract fraudulent as between the parties.

5. When will a misrepresentation constitute a fraud against the effects of which a court of equity will grant relief.

6. When will an improper concealment constitute a fraud against which equity will grant relief.

7. How far is the rule of caveat emptor on sales of personal property regarded in equity.

8. When will a contract be regarded fraudulent by the condition of one of the parties and when not.

9. How far do events of equity regard the common-law maxim that "A man shall not be permitted to stultify himself."

10. How do courts of equity regard drunkenness as affecting contracts.

11. How are the contracts of persons of very imbecile mind regarded in equity.

12. How are the contracts of infants regarded in equity.

13. How are the contracts of married women regarded.

.

14. How far does equity follow the law in regard to married women.

15. How will inadequacy of consideration affect a contract.

16. In what cases of actual fraud other than in matters of contract, can courts of equity grant relief.

.

17. Will contracts which are required to be in writing by the statute of frauds, be supported, although resting merely in parol, if partially executed.

CHAPTER VII.

CONSTRUCTIVE FRAUD.

1. What is meant by constructive fraud, and into how many classes is it usually divided.

2. What cases are included under the first class of constructive frauds, and how are they each classed.

3. What principles are applied by courts of equity to contracts where both parties are *particeps criminis*, and upon what maxim do they act.

4. When are illegal contracts capable of confirmation, and what maxim applies.

5. What cases are included in the second class of constructive frauds, and what principles are applicable to them.

6. How are contracts between parent and child regarded, whereby the latter secures benefits to the former.

7. How are contracts between guardian and ward looked upon, and also between attorney and client.

8. How far is an agent bound to render service, skill, &c., to his principal's benefit.

9. How far is a trustee restricted in regard to the trust estate.

10. What is the doctrine as regards contracts between principal and surety, and also between principal and creditor, as affecting surety.

11. What acts of the creditor will discharge the surety.

12. What cases belong to the third class of constructive frauds.

13. How are contracts made with seamen for their wages or prize money regarded.

14. What about contracts usually called catching bargains made with heirs, reversioners, and expectants, relating to expectant estates.

15. What is a post obit bond, and how are they to be regarded.

16. How is the statute regarding the conveyance of lands, goods, or chattels to defeat or delay creditors, interpreted by the courts.

17. When will a conveyance voluntarily made by a person in favor of his wife and children be sustained.

18. Will a voluntary conveyance which is void as to creditors be good as between the parties.

19. Will equity grant relief where the property has been subsequently conveyed for a valuable consideration to a purchaser without notice of the fraud.

20. How are secret compositions between an insolvent debtor and his creditors regarded.

21. Can money paid under them be recovered

22. Will equity grant relief against underhand agreements which operate as a fraud upon third persons.

23. How is a party who enables another to commit a fraud regarded.

24. Will infancy or coverture constitute any excuse for concealment or misrepresentation.

25. How will equity hold a person who purchases property with full notice of the legal or equitable title of another.

26. What is held to be sufficient notice.

27. How does notice to an agent or attorney affect the principal.

28. Will equity protect a purchaser with notice from one who acquired his title without it.

29. In what cases will relief be given where there is collusion with fiduciaries in violation of their trust.

30. What is the doctrine of tacking securities.

31. How are liens to be paid in the United States.

CHAPTER VIII.

ACCOUNT.

1. When did an action of account lie at common law, and what are the grounds and limits of equitable jurisdiction in matters of account.

2. What is the rule as to the appropriation of payments.

3. How are the parties to a bill for an account regarded in equity.

4. What principles are applicable to stated accounts.

5. After what lapse of time will courts of equity refuse to entertain a bill for an account.

7. When, against whom, and on what grounds will a court of equity entertain a bill for an account as against agents.

8. How will an agent be regarded who has neglected to keep regular accounts, or who has so intermixed his principal's property with his own that they can not be distinguished.

9. What is apportionment, and when will it be decreed in equity.

10. What is the rule in relation to rents, charges, and incumbrances on land.

11. What does general average mean, and when is it a ground of equitable jurisdiction.

12. Upon what grounds and in what cases will courts of equity enforce a contribution, and what maxim do they follow.

13. When and how far does the right to enforce contribution exist among co-sureties.

14. Will the release of one surety discharge the remaining obligors.

15. Are sureties entitled to the benefit of all securities which have been taken by any one of them to indemnify himself against their common liability.

16. What is a lien, and when does it furnish a subject for equitable jurisdiction.

17. When will equity decree an account of rents and profits.

18. When will equity decree an account in cases of waste.

CHAPTER IX.

ADMINISTRATION.

1. Upon what grounds is the jurisdiction in the administration of assets founded.

2. What is a bill of conformity.

3. What is a creditor's bill.

4. What is the usual decree in such cases.

5. What are regarded as equitable assets, and upon what principle are they administered.

6. What is meant by the marshalling of assets, and when will it be done.

7. In what order are assets generally marshalled for the payment of debts.

See *post*, Chap. XIII.

8. When will courts of equity follow assets which have been misapplied by an executor into the hands of third persons.

9. What principles are applicable to auxiliary administrations.

10. By what laws are assets to be administered as regards creditors, and how are the claims of legatees and distributees determined.

11. Where a domestic administrator has taken out letters abroad, can he be called upon before the foreign administration is settled for an account of assets received there.

12. How far are separate administrations granted in different countries independent.

CHAPTER X.

LEGACIES.

1. On what grounds do courts of equity entertain suits for legacies.

2. Where the testator has not disposed of the surplus of his personal estate, how will the executor take it.

3. What protection over legacies will be exercised by courts of equity.

4. What is the doctrine in equity as to a donatio causa mortis.

5. Can a donatio causa mortis be the subject of a trust.

CHAPTER XI.

CONFUSION OF BOUNDARIES.

1. When will courts of equity entertain a bill to ascertain the boundaries of land.

2. How do they ascertain the boundaries.

CHAPTER XII.

DOWER.

1. When will a bill be entertained for the assignment of dower.

2. What if the right to dower is disputed.

3. Will a bill by a widow for discovery and relief be entertained against a bona fide purchaser for a valuable consideration without notice.

CHAPTER XIII.

MARSHALLING OF SECURITIES.

1. When and on what grounds do courts of equity marshal securities.

See *ante*, Chap. IX.

2. If there are two estates mortgaged to A. for the same debt, and one of them to B., can A. be required by B. to resort to that in the first instance which B. can not touch.

3. Can a creditor whose debt is secured by a fund, as well as the personal obligation of the debtor, be compelled to resort to the fund in the first instance.

CHAPTER XIV.

PARTITION.

1. In a bill for partition is it necessary to state any particular grounds of equitable interposition.

2. Upon what is jurisdiction founded.

3. What can the court do in regard to the conveyances according to the allotment of the commissioners.

4. What if the parties are unable to execute a conveyance.

5. How far can a writ of partition give relief.

6. Does equity give relief in all cases in partition.

CHAPTER XV

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1. What remedies at law have partners against each other.

2. What are the most important and principal remedial functions exercised by courts of equity in cases of partnership.

3. How is real estate which has been purchased with partnership funds and as partnership stock regarded in equity.

4. How is it as between the heirs and distributees of a deceased partner.

5. On what principles do courts of equity apply the assets of a partnership as between the partners and their joint or separate creditors.

6. Can a joint creditor proceed at law against the separate estate of one partner.

7. On the death of one partner, can the joint creditors proceed in the first instance against his separate estate.

8. Where at law an execution is levied on the joint property to satisfy the separate debt of one partner, will a court of equity restrain the sale thereof.

CHAPTER XVI.

MATTERS OF RENT.

1. On what principle and when do courts of equity enforce the payment of rent.

2. How is rent regarded as to the land.

PART III.

PECULIAR REMEDIES IN EQUITY.

CHAPTER XVII.

DISCOVERY, RESCISSION, CANCELLATION, AND DELIVERY OF INSTRUMENTS.

1. What are the nature and grounds of the jurisdiction with reference to discovery. (See Chap. XLII., *post.*)

2. When and on what grounds do courts of equity direct the rescission, concellation, or delivery of instruments.

3. Is there any distinction in equity between an instrument utterly void, and one that is merely voidable.

4. Will the court interfere where the illegality or nullity of the instrument is apparent on its face.

5. How will a court of equity ascertain the validity of a contested instrument.

6. When will courts of equity, and when will they not, entertain bills for the delivery of specific chattels.

.

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SPECIFIC PERFORMANCE OF AGREEMENTS AND OTHER DUTIES.

1. Can the specific performance of an agreement be claimed in any case as a matter of right.

2. In what cases will contracts not be enforced.

3. What are the three classes of cases in which the application is made.

4. When will the specific performance of personal contracts be decreed.

5. Will the specific performance of a covenant by a husband that his wife shall execute a conveyance with him, or perform any other acts, be decreed.

6. When will courts entertain applications for the specific performance of real contracts.

7. Will a defendant be permitted to use evidence in resisting a decree which a plaintiff would not be allowed to use for the purpose of obtaining it.

8. When will the contract ordinarily be enforced.

9. When will time be regarded as the essence of a contract.

10. When will courts decree the specific performance of a contract respecting land which is within the provisions of the statute of frauds.

11. What is considered part performance.

12. What other parol contracts void at law will be specifically enforced in equity.

13. When the specific execution of a contract is decreed between the parties, how far will it be enforced.

14. Will courts enforce the specific performance of voluntary contracts, or such as are founded upon no valuable or meritorious consideration.

15. What exception is there to this doctrine.

CHAPTER XIX.

COMPENSATION AND DAMAGES.

1. In what cases will equity give redress by way of compensation and damages.

2. How is the amount of compensation and damages ascertained in equity.

3. How are liquidated damages regarded.

CHAPTER XX.

INTERPLEADER.

1. What is the nature and origin of the jurisdiction on bills of interpleader, and when are they usually allowed.

2. What is the effect of it.

3. When may a tenant bring a bill of interpleader.

4. Can a person who is in possession of property as agent or consignee of another bring a bill of interpleader where the property is claimed by a third person under an independent title.

5. What exception is there to this rule.

6. Will a bill of interpleader lie in behalf of a sheriff who has seized goods on execution or other process, to which adverse claims are set up, and why not.

7. What is a bill in the nature of a bill of interpleader.

CHAPTER XXI.

BILLS QUIA TIMET.

1. What is the nature and extent of a bill quia timet, and when will it lie.

2. What is a receiver, and when will a receiver be appointed.

3. What are the rights and duties of a receiver, and how do courts regard them.

4. When will the giving of security or the payment of money into court be required on bills quia timet.

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BILLS OF PEACE.

1. How many classes of bills of peace are there, and when will they lie.

2. Will it lie where the right is disputed between two persons only.

3. In what other class of cases will it lie, and upon what maxim does the court act.

CHAPTER XXIII.

INJUNCTIONS.

1. What is a writ of injunction.
2. What is the judicial writ, and what is the remedial writ.
3. What are the general principles that regulate this branch of equity jurisprudence.
4. When and on what grounds will courts of equity restrain proceedings at law.
5. In what cases will they refuse to restrain proceedings at law.

6. When will courts of equity interfere to abate or to prevent a public nuisance.

7. When will an injunction be granted to protect rights connected with real property.

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